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No. 00-1509

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

STEVEN CAMBRA, Warden, *Petitioner*,

v.

MICHAEL ANTHONY, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Does the Court of Appeals' application of Rule 15(c) of the Federal Rules of Civil Procedure raise critical legal issues that merit certiorari where the district court failed to rule on the petitioner's motion for stay of proceedings because the motion was received by the clerk but not file-stamped, such that the Court of Appeals permitted relation-back of claims that had already been presented in an earlier, timely-filed petition?

2. Does the Court of Appeals' application of the "mailbox rule" on the unusual facts of this case raise critical legal issues that merit certiorari, given that the petition was timely filed in the California Supreme Court, given that California has adopted the "mailbox rule" for filing notices of appeal, and given that California has established a 90-day filing deadline within which a capital habeas petition is presumptively timely, such that California would likely apply the "mailbox-rule" to the filing of state habeas petitions?

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MOTION TO PROCEED IN FORMA PAUPERIS

Pursuant to Title 18, United States Code § 3006A(d)(7) and Rule 39 of this Court, Respondent Michael Anthony asks leave to file the attached Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of fees and costs and to proceed *in forma pauperis*.

Respondent proceeded *pro se* at trial and was represented by counsel pursuant to Title 18, United States Code, § 3006A(b), (d)(7) in the district court and on appeal to the Ninth Circuit Court of Appeals.

Dated: May 3, 2001

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INTRODUCTION

A habeas petitioner seeking to incorporate new claims into his already-filed petition has traditionally relied upon the amendment procedure set forth in Rule 15(c) of the Federal Rules of Civil Procedure. Congress, in enacting the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") gave no indication that it intended to change this settled practice. Indeed, subsequent to the enactment of the AEDPA, district courts have continued to utilize the procedure of Rule 15(c) to determine whether leave to amend should be granted in habeas proceedings. Reviewing this precedent and the absence of authority to the contrary, the Court of Appeals concluded that Rule 15(c) continues to apply to habeas proceedings.

The state contends that this settled practice must now be rejected in light of the enactment of the AEDPA because amendment through Rule 15(c) may interfere with the orderly resolution of habeas claims. This concern is not well-founded because the procedure set forth in Rule 15(c) adequately accounts for concerns of delay and untimeliness. The Court of Appeals' determination raises no critical or novel legal issues and certiorari is therefore unwarranted.

In the alternative, the state contends that even if amendment is permissible under Rule 15(c), the Court of Appeals erred in permitting amendment in this case. Once again, the state's argument should be rejected. The Court of Appeals' determination appropriately rested upon the "unusual" facts of this case, including that Mr. Anthony had

presented all the claims in his initial petition, although some were not yet fully exhausted, and had subsequently requested a stay of proceedings so that he could exhaust those claims, but his motion for stay was inadvertently never ruled upon by the court. The Court of Appeals thus correctly concluded that Rule 15(c) was "ideally suited to circumstances such as these." In response, the state contends for the first time in this Court that it did not have notice of the newly exhausted claims because it was never served with Mr. Anthony's initial petition. This factual contention is not supported by the record and cannot provide any basis for a grant of certiorari.

The state also challenges the Court of Appeals' application of the "mailbox rule," under which the Court of Appeals concluded that Mr. Anthony's state habeas petition was timely filed within the statute-of-limitations period for purposes of the tolling provision of 28 U.S.C. § 2244(d)(2). Citing the Tenth Circuit's analysis of New Mexico's procedural rules and the Fifth Circuit's rejection of the mailbox rule for filings in Texas state courts, the state contends that a circuit conflict exists because the Tenth and Fifth Circuits have declined to apply the mailbox rule to state filings. In fact, no circuit conflict exists because both the Tenth and Fifth Circuits recognized that federal courts may apply the mailbox rule to state filings if the state's procedural rules indicated that the state itself would follow the mailbox rule.

In support of its argument, the state implies that California would be unlikely to apply the mailbox rule to the filing of state habeas petitions because California has no

statutory deadline for habeas petitions. In fact, California *does* have a statutory deadline for the filing of *capital* habeas petitions, under which such petitions are presumptively timely if filed within 90 days of the filing deadline for the appellant's reply brief in the California Supreme Court on direct appeal. Moreover, the California Supreme Court has followed *Houston v. Lack*, 487 U.S. 266 (1988) to permit the filing of notices of appeal pursuant to the mailbox rule, and the California Legislature has expressly codified the California Supreme Court's holding. Because California would likely apply the mailbox rule to the filing of state habeas petitions, the Court of Appeals correctly applied the mailbox rule in this case and there is no circuit conflict warranting the grant of certiorari.

For the foregoing reasons, the state's petition for writ of certiorari raises no worthy issues for review and the petition should accordingly be denied.

STATEMENT OF THE CASE

Respondent Michael Anthony was convicted of first-degree murder and conspiracy to commit murder on May 3, 1990. On July 1, 1990, the trial court sentenced Mr. Anthony to life in prison without the possibility of parole, with a consecutive one-year enhancement for a prior prison term. The California Court of Appeals affirmed the judgment on June 30, 1992 and the California Supreme Court denied Mr. Anthony's petition for review on September 24, 1992.

The AEDPA became law on April 24, 1996. The AEDPA established a one-year statute of limitations for collateral challenges to convictions in state court, requiring all

habeas claims to be brought in federal court within one year of the conclusion of direct review in state court. In the majority of circuits, including the Ninth, a prisoner whose conviction became final prior to April 24, 1996 had until April 24, 1997 to file his petition in federal court. However, the one-year statute of limitations was tolled during any period in which a prisoner's petition for collateral review was pending in state court. 28 U.S.C. § 2244(d)(2).

On April 21, 1997, Mr. Anthony presented to prison authorities at Pelican Bay State Prison a petition for writ of habeas corpus that he sought to file in the California Supreme Court.

Four days later, on April 25, 1997, the petition was filed in the California Supreme Court.

In the interim, on April 23, 1997 the federal district court in the Northern District of California filed a separate federal habeas petition that Mr. Anthony submitted. This habeas petition was "mixed" in that it contained one exhausted claim and five unexhausted claims. The unexhausted claims were contained within the state petition that Mr. Anthony had simultaneously filed with the California Supreme Court.

While the state petition was pending in the California Supreme Court, the federal petition was dismissed by the district court without prejudice because it was a "mixed" petition containing unexhausted claims.

On June 13, 1997, Mr. Anthony refiled the one exhausted claim with the district

court. The district court construed this petition as an amendment to the petition that he had previously filed and ordered the June 13 petition filed *nunc pro tunc* as of the date of the original filing on April 23, 1997.

Also on June 13, 1997, Mr. Anthony separately submitted a motion requesting that the federal petition be stayed pending exhaustion of his remaining claims in state court, but this motion for stay was somehow overlooked and was not filed or ruled upon by the district court.

On July 8, 1997, the district court issued an order to show cause directing the state to respond to the one exhausted claim raised in Mr. Anthony's June 13 petition.

On July 30, 1997, the California Supreme Court denied Mr. Anthony's habeas petition, stating in full: "Petition for writ of habeas corpus is DENIED. (*In re Swain* (1949) 34 Cal.2d 300, 304; *In re Clark* (1993) 5 Cal.4th 750; *In re Dixon* (1953) 41 Cal.2d 756, 759; *In re Lindley* (1947) 29 Cal.2d 709, 723.)" Neither Mr. Anthony nor the state received notice that the habeas petition had been denied.

On September 23, 1997, without realizing that his state petition had been denied, Mr. Anthony renewed his request for a stay of his federal petition pending exhaustion of the petition in state court.

On October 29, 1997, the district court ruled on Mr. Anthony's motion for stay. The court observed that, although neither party appeared to have received notice, the California Supreme Court had ruled on the state petition such that the claims had become

exhausted and could be presented in federal court. Noting that Mr. Anthony had "proceeded expeditiously and in good faith," the court granted his motion to stay federal proceedings and ordered Mr. Anthony to file his amended petition within 30 days of the date of its order.

The state moved for reconsideration on grounds that Mr. Anthony's June 13 petition was not timely filed. On February 18, 1998, the court reaffirmed its prior ruling and again directed Mr. Anthony to file his amended petition within 30 days. The court found that Mr. Anthony's June 13 petition was timely filed on two alternate grounds. First, the court noted that it had erred in dismissing Mr. Anthony's April 23 petition without permitting him to amend or resubmit that petition to include only unexhausted claims. Had Mr. Anthony been permitted to amend the April 23 petition, the June 13 petition would thus have been "unquestionably . . . timely" under Federal Rule of Civil Procedure 15(c). The court thus concluded that "[e]quity requires that the June 13, 1997 filing be construed as an amendment or resubmission to the original petition filed on April 23, 1997 and be considered timely."

As an alternate ground for finding that the petition had been timely filed, the district court noted that the AEDPA's statute of limitations would have been tolled for any period during which Mr. Anthony's state petition were pending. That petition had been filed in the California Supreme Court on April 25, 1997 and was still pending on June 13. Because Mr. Anthony had actually presented the petition to prison authorities on

April 21, 1997, which was within the limitations period, the district court applied the "mailbox rule" set forth in *Houston v. Lack*, 487 U.S. 266 (1988), and concluded that the state petition had been filed on April 21, 1997 for purposes of tolling the AEDPA's statute of limitations. The court indicated that California law supported application of the mailbox rule in light of the California Supreme Court's decision in *In re Jordan*, 4 Cal.4th 116 (1992) (applying the mailbox rule to the filing of notices of appeal).

In compliance with the district court's order, Mr. Anthony delivered his amended petition to prison authorities on March 17, 1998, and it was filed with the district court on March 23, 1998. The district court thereafter denied Mr. Anthony's motion to amend his petition with the newly exhausted claims, ruling that he had "abused the writ."

In a published decision, the Court of Appeals found that the district court had properly applied Rule 15(c) to hold that the June 13 petition was an amendment to the April 23 petition. The Court of Appeals observed that the district court had erred in dismissing the April 23 petition outright, because the district court should have granted Mr. Anthony leave to amend. In addition, citing its earlier holding in *Saffold v. Newland*, 224 F.3d 1087 (9th Cir. 2000), the court affirmed the district court's conclusion that the "mailbox rule" would provide alternate basis to determine that the petition was timely. Finally, the court reversed the district court's determination that the newly exhausted claims were untimely. The court noted that the state had received notice of the claims in Mr. Anthony's April 23 petition. In addition, the court observed that Mr. Anthony had

acted with diligence in exhausting the claims and seeking to amend his petition. Thus, the court concluded that Rule 15(c) permitted Mr. Anthony to amend his petition to include the newly exhausted claims.

The state petitioned for rehearing and requested rehearing en banc. The Court of Appeals denied the petition for rehearing and request for rehearing en banc on January 26, 2001.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals' Resolution of the Rule 15(c) Issue Does Not Merit Review by This Court

A. The Court of Appeals Followed Settled Practice in Concluding that Rule 15(c) Governs Proposed Amendments in Habeas Proceedings

Numerous circuits have noted the applicability of Federal Rule of Civil Procedure 15(c) in federal habeas corpus proceedings. *See, e.g., United States v. Thomas*, 221 F.3d 430, 436 (3d Cir. 2000); *United States v. Pittman*, 209 F.3d 314, 317 (4th Cir. 2000); *Mederos v. United States*, 218 F.3d 1252, 1254 (11th Cir. 2000); *United States v. Espinoza-Saenz*, 235 F.3d 501, 504-05 (10th Cir. 2000); *United States v. Craycraft*, 167 F.3d 451, 457 (8th Cir. 1999). As the Eighth Circuit has observed, "[b]ecause habeas proceedings are civil in nature, the Federal Rules of Civil Procedure apply. Rule 15 allows amendments to pleadings, and leave to amend is within the discretion of the trial court." *Craycraft*, 167 F.3d at 457 n.6 (internal citations omitted). *See also Calderon v. Ashmus*, 523 U.S. 740, 750 (1998) (Breyer, J., concurring) (under Rule 11 of the Rules

Governing Section 2254 Cases in the United States District Courts, and unless otherwise expressly governed by statute, amendments in habeas corpus cases are governed by Rule 15).

While the state argues that Rule 15 should no longer be applied in habeas proceedings in light of the enactment of the AEDPA, every case cited above was issued after the AEDPA became law. Indeed, the Third Circuit rejected a similar contention where the petitioner sought to amend a section 2255 petition after the statute of limitations had passed. *See Thomas*, 221 F.3d at 434 ("The government posits that the tension between Rule 15(c) and the AEDPA requires us to hold that Rule 15(c) cannot apply to habeas proceedings in the same manner in which it applies to other civil proceedings. We disagree.").

Here, the Court of Appeals found no authority to support the state's position. App. A at 20. To the contrary, several courts have applied Rule 15(c) after passage of the AEDPA to permit filing of otherwise untimely amendments. *See, e.g, Mederos v. United States*, 218 F.3d 436 (11th Cir. 2000); *Grossi v. United States*, 1999 WL 439237, at *10-11 (N.D.Ill. June 28, 1999). Moreover, the Court of Appeals rejected the state's argument that application of Rule 15(c) would interfere with the orderly resolution of habeas petitions. Importantly, the Court of Appeals observed that the petitioner must seek leave to amend from the district court, which will perform a gate-keeping function in determining whether amendment should be permitted. App. A at 22-23. The district

court may refuse to permit amendment if "there is any evidence of 'undue delay, bad faith, or dilatory motive' with respect to the filing of the amendment." App. A at 23 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962). Because the district court is well-suited to perform the gate-keeping function authorized by Rule 15(c), and because the AEDPA set forth no alternate procedure to govern the amendment of habeas petitions, the Court of Appeals' resolution of this issue rested upon a plain application of settled law. As the Court of Appeals noted, "[t]he state has cited to no authority that supports the proposition that AEDPA renders Rule 15 inapplicable to federal habeas corpus proceedings." App. A at 20.

In support of its position, the state contends that the Court of Appeals' decision will allow habeas petitioners to conduct an "end-run" around the AEDPA's one-year limitations period. Under the state's reading of the Court of Appeals' decision, habeas petitioners will now be permitted to file an improper "mixed" petition within the statute of limitations; will then be permitted to stay their exhausted claims; and will finally be permitted to amend their petition with any additional claims once they have been exhausted.

The Court of Appeals considered and rejected the state's argument on two grounds, each of which rested upon the peculiar facts of this case. First, as the Court of Appeals reasoned, the touchstone of the Rule 15(c) analysis is notice, which Mr. Anthony provided in his initial petition. App. A at 22. The court thus distinguished *Craycraft* and

United States v. Duffus, 174 F.3d 333 (3d Cir. 1999), in which the petitioners had attempted to amend their petitions with entirely new claims after the statute of limitations period had expired. Here, by contrast, Mr. Anthony sought to amend his petition with precisely the same claims that he had already presented in the April 23 petition. The court thus concluded, "allowing habeas petitioners to invoke 15(c) in these circumstances will not undermine AEDPA's policy of expediting habeas review." App. A at 22.

In its petition for writ of certiorari, the state disputes the Court of Appeals' conclusion that the state had notice of the claims. For the first time in this Court, the state now contends that it did not receive Mr. Anthony's April 23 petition. Pet. Brief at 12 n.3. This factual contention should be rejected outright because the state never made this claim in the district court or the Court of Appeals. Indeed, without objection from the state, the Court of Appeals explicitly relied upon Mr. Anthony's April 23 filing to conclude: "[t]he state clearly had prior notice of the claims and of Anthony's intention to raise them at the earliest possible time." App. A p.21.

The Court of Appeals also noted the important gate-keeping function that has historically been performed by the district court at every stage of the stay-and-amendment process. First, the district court exercises its discretion to determine whether the petitioner's request for a stay of the exhausted claims should be granted. Second, and more importantly, the district court determines whether to grant the petitioner's subsequent request to amend. Should the petitioner wait years or even months to amend

the petition, the district court has discretion to deny leave to amend. App. A at 22. Here, the record demonstrated that Mr. Anthony was diligent throughout the proceedings and complied with the briefing schedule set by the court, with the only periods of delay flowing from court errors that could not fairly be attributed to him. App. A at 22.

In view of the "unusual" facts of this case, as described by the Court of Appeals, the court correctly concluded that "Rule 15(c) is ideally suited to circumstances such as these." App. A at 23. This Court should therefore deny the state's petition for writ of certiorari because the Court of Appeals' application of Rule 15(c) rested upon settled law.

B. The Court of Appeals Correctly Applied Rule 15(c) to Permit Mr. Anthony to Amend His April 23, 1997 Petition With the Newly Exhausted Claims

As an alternate basis for granting the writ, the state argues that even if Rule 15(c) is applicable in habeas proceedings, the Court of Appeals erred by invoking it in this case. First, the state contends that the June 13 petition could not have been deemed timely filed through relation back to the April 23 petition because the April 23 petition had been dismissed. Second, extending this argument, the state contends that the subsequent filing of the newly exhausted claims in March 1998 must also be considered untimely because the newly exhausted claims could not relate back to the June 13 petition insofar as that petition contained only one claim.

The state argues that the Court of Appeals' decision regarding the application of Rule 15 raises important questions of law. In fact, as noted above, the Court of Appeals'

decision was driven by a highly fact-specific inquiry regarding the unusual manner in which Mr. Anthony's claims were resolved by the district court, such that the precedential value of the court's decision is somewhat limited.

First, while the district court initially dismissed the April 23 petition as a mixed petition, the court subsequently modified its dismissal order when it received Mr. Anthony's June 13 petition containing the one exhausted claim. At that time, the court treated the June 13 petition as an amendment of the April 23 petition, which it deemed submitted *nunc pro tunc* to the original filing date of April 23. The court clarified that it had erred in dismissing the April 23 petition because the court should have granted Mr. Anthony leave to amend. The court's action in correcting its error was in line with settled law. As the Court of Appeals concluded, "The district court erred in dismissing the petition without leave to amend; it acted within its discretion when it corrected its error by construing Anthony's June 13 filing as an amendment." App. A at 17 n.1. As characterized by the Court of Appeals, the district court "properly exercised its equitable powers to accept Anthony's June 13 petition *nunc pro tunc* to April 23, the date of the original filing." App. A at 16.

Second, the Court of Appeals also noted the "unusual" fact that while Mr. Anthony sought a stay of the federal proceedings on June 13, his motion for stay was never file-stamped or ruled upon. By the time Mr. Anthony reinstated his request for a stay on September 23, the California Supreme Court had already denied his habeas petition such

that the statute of limitations in federal court was no longer tolled. As the Court of Appeals noted, if the motion for stay had been timely granted, then Mr. Anthony could have sought to amend his petition with the newly exhausted claims while the petition was stayed in the district court, as soon as he received word that the California Supreme Court had denied his petition. App. A at 19-20. In light of the district court's failure to rule on the motion for stay, the Court of Appeals noted that the only way that Mr. Anthony's remaining claims could be timely filed would be through relation back to the original petition.

It is also significant that Mr. Anthony had almost completed the exhaustion process at the time that he filed his petition in federal court. As noted, he filed his final state petition at the same time that he filed his initial federal petition, raising in state court the same five unexhausted claims that he had presented to the district court. Those claims were exhausted approximately three months later when the California Supreme Court denied the petition.

Finally, the Court of Appeals correctly determined that Rule 15(c) permitted relation-back and incorporation of the newly exhausted claims in March 1998. On this point, the state argues incorrectly that the June 13 petition contained only one claim, such that the claims submitted in March 1998 could not relate back to that petition. In fact, the state ignores the import of the district court's ruling regarding the June 13 petition, because the district court's relation-back of the June 13 petition to the April 23 petition

effectively reinstated the April 23 petition for purposes of subsequent amendments under Rule 15(c). Notwithstanding the state's belated contention that it did not receive the April 23 petition, the record below demonstrates that the state did receive the petition. Indeed, without objection from the state, the Court of Appeals relied upon this fact to conclude that the state had notice of the claims. As this Court has observed, "The rationale of Rule 15(c) is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitation were intended to provide." *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 150 n.3 (1984). That logic applies with equal force here. Thus, in view of the settled law supporting the Court of Appeals' holding both before and after enactment of the AEDPA, and in light of the fact that the April 23 petition contained the precise claims that Mr. Anthony subsequently sought to incorporate, the Court of Appeals correctly concluded that the amendments in March 1998 should have related back to his initial petition.

II. The Court of Appeals' Resolution of the "Mailbox Rule" Issue Does Not Merit Certiorari

As an alternate and independent basis for concluding that Mr. Anthony's June 13 petition was timely, the district court and the Court of Appeals concluded that the one-year limitations period under the AEDPA would be tolled beyond April 23, 1997 as long as Mr. Anthony's state petition was pending in the California Supreme Court at that time. 28 U.S.C. § 2244(d)(2). The record demonstrated that Mr. Anthony had presented his petition to prison authorities at Pelican Bay State Prison on April 21, 1997. However, it

had not actually been filed until April 25, 1997, which was outside the limitations period. Following *Houston v. Lack*, 487 U.S. 266 (1988) and *Saffold v. Newland*, 224 F.3d 1087 (9th Cir. 2000), the Court of Appeals applied the "mailbox rule" and concluded that the petition should be deemed filed as of April 21, 1997.

The state argues that this Court should grant certiorari to resolve a circuit conflict regarding the authority of federal courts to apply the "mailbox rule" to the filing of habeas petitions in state court. Pet. Brief. at 16-17 (citing *Adams v. LeMaster*, 223 F.3d 1177 (10th Cir. 2000); *Coleman v. Johnson*, 184 F.3d 398 (5th Cir. 1999). In addition, the state argues that the Court of Appeals' opinion conflicts with this Court's decision in *Artuz v. Bennett*, 121 S.Ct. 361 (2000). Both contentions are without merit.

First, the state mischaracterizes the import of the holdings in *Adams* and *Coleman*. In fact, those cases are not in conflict with the decision of the Court of Appeals because neither *Adams* nor *Coleman* concluded that federal courts lack the authority to apply the mailbox rule to state filings. Rather, those courts addressed whether the state procedural rules in the pertinent jurisdiction would permit application of the mailbox rule to the filing of state habeas petitions. The Tenth Circuit concluded that New Mexico's rules would not support application of the mailbox rule. *See Adams*, 223 F.3d at 1182 ("We are convinced New Mexico's rules require, at the very least, receipt by the clerk before a petition is filed."). Similarly, the Fifth Circuit noted that the question would turn on the procedural rules of Texas, but the court of appeals declined to conduct that analysis and

instead rejected application of the mailbox rule without explanation. *See Coleman*, 184 F.3d at 402 (internal footnote omitted) ("[Applying the mailbox rule to the filing of a state petition] would require us to interpret state rules of filing and to address the filing systems of state courts. We decline to extend the mailbox rule to the determination of filing dates for state habeas applications.").

In contrast to the state rules considered in *Adams*, which indicated that New Mexico would not apply the mailbox rule to state habeas petitions,[1] California's caselaw and procedural rules demonstrate that California would likely apply the mailbox rule to state habeas petitions. *See, e.g., In re Jordan*, 4 Cal.4th 116, 130-31 (1992) (citing *Houston v. Lack* and reaffirming application of "prison-delivery rule" to filing of notice of appeal); *see also* California Rules of Court, Rule 31(e) (amended Jan. 1, 1994) (codifying *In re Jordan*). Indeed, unlike New Mexico, and contrary to the state's contention that California has established *no* statutory time limit for habeas petitions, *see* Pet. Brief at 17, California has indeed established a statutory time limit for habeas petitions in capital cases: a petition is presumptively timely if it is filed within 90 days of the filing deadline for the appellant's reply brief on direct appeal. *See In re Sanders*, 21 Cal.4th 697, 704-705 (1999) (citing California Supreme Court Policies, Policy 3). After

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[1]New Mexico does not set a time limit for the filing of habeas petitions. *See Adams*, 223 F.3d at 1183. For this reason, the mailbox rule would have limited utility. *See id.* In addition, New Mexico's other procedural rules pertaining to the filing of legal documents refer either expressly or impliedly to actual receipt by the court. *See id.* at 1182.

the 90-day deadline has passed, the petitioner must establish the timeliness of his petition by satisfying a "due diligence" test set forth in *In re Clark*, 5 Cal.4th 750, 797-98 (1993). Thus, because California has expressly adopted the mailbox rule for the filing of a notice of appeal, and because California has established a filing deadline in the context of capital habeas cases, California would likely apply the mailbox rule to the filing of habeas cases.

Second, contrary to the state's remaining contention, this Court's decision in *Artuz* is not in conflict with the decision of the Court of Appeals. In *Artuz*, this Court concluded that a state habeas petition will be considered "properly filed" for purposes of section 2244(d)(2)'s tolling provision even though the petition contains procedurally defaulted claims. *See Artuz*, 121 S.Ct. at 364-65. As noted in *Artuz*, a document is "properly filed" when it is delivered in accordance with the laws and rules governing filing, including rules governing "the form of the document, the time limits on its delivery, the court and office in which it must be lodged, and the requisite filing fee." *See id.* at 364. Because California has adopted the mailbox rule for the filing of a notice of appeal, California would likely extend that holding to conclude that a habeas petition is presumptively timely when submitted to prison authorities within the 90-day deadline.

Finally, it is undisputed that Mr. Anthony's habeas petition was "properly filed" according to California law, and the state has not argued that the timeliness of the petition was a factor in the California Supreme Court's rejection of the claims. Thus, application

of the mailbox rule to toll the federal statute of limitations will not impact or conflict with the California Supreme Court's holding in any way.

For these reasons, the Court of Appeals' resolution of the mailbox rule issue creates neither a circuit conflict nor a conflict with *Artuz*. The state's petition for writ of certiorari should accordingly be denied.

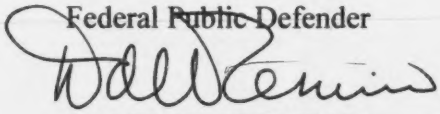
CONCLUSION

The state's certiorari petition raises no worthy issues for review. In accordance with settled law, the Court of Appeals properly applied the relation-back doctrine of Rule 15(c) to permit Mr. Anthony to amend his habeas petition such that his newly exhausted claims would be timely filed. In addition, the Court of Appeals correctly concluded that the newly exhausted claims would also be timely filed through application of the "mailbox rule" to Mr. Anthony's state habeas petition, thus tolling the AEDPA's statute of limitations during the pendency of his state petition. For the foregoing reasons, this Court should deny the state's petition for writ of certiorari.

Dated: May 3, 2001

Respectfully submitted,

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Federal Public Defender



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No. 00-1509

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

STEVEN CAMBRA, Warden, *Petitioner*,

v.

MICHAEL ANTHONY, *Respondent*.

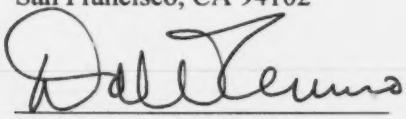
CERTIFICATE OF SERVICE BY MAIL

I, David W. Fermino, counsel appointed pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A(b), hereby certify that on this 3rd day of May, 2001, ten copies of the Brief in Opposition to the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to the Clerk of the Supreme Court of the United States and within the time allowed for filing said Brief in Opposition was served on the following counsel:

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